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09/890,715	12/31/2001	Micheal Butsch	01-407	7784

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EXAMINER
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DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 02/09/2004

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 15

Application Number: 09/890,715  
Filing Date: December 31, 2001  
Appellant(s): BUTSCH ET AL.

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Gregory P. LaPointe  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 11, 2003.

Art Unit: 3731

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because applicant fails to argue claims 30-33 in the arguments section of the Appeal Brief.

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

US 5,853,384	BAIR	12-1998
US RE33,258	ONIK ET AL.	7-1990
EP 0 258 901	KOBAYASHI ET AL.	3-1988

**(10) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

The rejection of claim 27, under 35 U.S.C. 102 as being anticipated by US 5,583,384 is withdrawn.

Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 258 901. The Kobayashi patent discloses a cutting nozzle element (1') with an opening (35) through which a severing medium flows, as illustrated in Figures 8 and 9. Illustrated in Fig. 10, a hollow cutting-nozzle body contains a shut-off element (42). Shut-off element (42) oscillates in a reciprocating manner within the body.

To better explain the radial nature of the nozzle, "the axis" of claim 27 is defined by the longitudinal axis of the shut-off element (42), which is located within the hollow cutting-nozzle body. The nozzle 32 is transverse to "the axis." An annular space is defined by the body and the shut-off element (42). The nozzle (32) communicates with the annular space.

The shut-off element (42) and body define an annular space and a variable gap is formed between a surface of the shut-off element (42) and the wall of the body. A biasing means, or spring (43), applies pressure to a shoulder of the shut-off element (42), which closes off the nozzle opening (32). The spring (43) biases the shut-off element in one direction, and another means (44) is provided for selectively moving the shut-off element (42) in the opposite direction (column 10, line 25). Sporadically applying a manual force to means 44 results in a pulsed feed.

The rejection of claims 28-30 and 32-33 under 35 U.S.C. 103(a) as being unpatentable over US 5,853,384 in view of EP 0 258 901 is withdrawn.

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The rejection of claim 31 under 35 U.S.C. 103(a) as being unpatentable over US 5,853,384 in view of US RE33,258 is withdrawn

**(11) Response to Arguments**

(A) The rejection of claim 27 under 35 USC 102 as being anticipated by US 5,583,384 is withdrawn. The patent fails to disclose a "means for reciprocating." Applicant describes the means for reciprocating as an "energy storing element." The '384 patent does not disclose such an element.

(B) The rejection of claim 27 under 35 USC 102 over EP 0 258 901 is sustained. The EP '901 patent discloses a radial nozzle (32) which transverse with respect to an axis of the cutting-nozzle body. The axis is defined as the longitudinal axis of the shut-off element (42). The shut-off element (42) is located within the cutting-nozzle body.

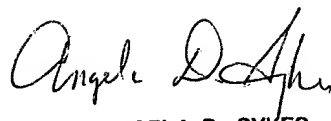
(C) The rejection of claims 28 and 29 under 35 USC 102 over EP 0 258 901 are sustained. As illustrated in Fig. 10, the shut of element reciprocates by way of a reciprocating means comprising a biasing means (43) and a means for moving (44). The means for moving (44) enables manual control of the feeding fluid in a pulsed manner to the annular space. The variable gap, located between a surface of the shut off element (42) and an inner wall of body, determines the feeding of the pressurized fluid.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

D. Jacob Davis  
February 3, 2004

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